IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7018 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMSEVAK KALYANSING ALIAS KALIYO MUSAISING THAKUR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

Mr.D.N.Patel, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The Detaining Authority, respondent no.1 by an order dated 2.7.1999 vide Annexure A passed an order of detention of the detenu herein under the provisions contained in the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short). The grounds of detention were served on the detenu vide Annexure D dated

2.7.1999.

2. It appears that the detenu is a bootlegger. In as much as 5 cases have been registered against him for indulging in dealing with illicit liquor. The detenu is also found in causing injuries to others. There is an incident dated 3.6.1999 referred by the Detaining Authority indicating that the innocent person standing in the chawl was beaten under the pretext that the witness is watching his behavior as he is declared as wanted by the police. He started abusing the said person and thereafter beating the said person. People as a result of which collected and thereupon he took out a knife and rushed towards the people collected and as a result of which people ran away. Thus an atmosphere of terror was created by the detenu. Similarly, there is a reference of incident dated 15.6.99. The Detaining Authority was satisfied that the detenu is a boot legger and has continued his activities and is harassing innocent persons. In the past, he was detained on 5 occasions. The legality of the grounds are not required to be examined in the instant case as there is no affidavit filed by the State controverting the grounds raised made in the petition to the effect that the representation made by the detenu has not been decided in accordance with law. The detenu in the petition in Para 20 has averred as under:-

"20. The petitioner says and submits that his advocate has made representation on 1.9.1999 to the Home Minister by Regd. A.D., it is duly received by the office, whether it is considered or not? if considered then it is mechanical and (there is : sil) non supply chemical analyser report and statements of witnesses to the petitioner. The petitioner further submits that in is said representation he has asked report of the Chemical analyser and statements of witnesses, it is most important and vital documents which are not supplied till today by the authority. Therefore petitioner could not make effective representation and therefore fundamental rights guaranteed under Article 22(5) of the Constitution of India is violated. Thus petitioner's continued detention has become illegal."

3. This aforesaid ground has not been controverted

by the State. Thus, it is very clear that the representation has been decided or not cannot be decided by the Court. It is the duty of the Authority considering the representation to decide the same in accordance with law. In absence of affidavit, it is not possible for this Court to come to a conclusion that the representation has been disposed of in accordance with law and hence continued detention is required to be declared as bad and illegal and hence the detenu is required to be released forthwith. Rule made absolute with no orders as to costs.

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